

From: [Terry Jones](#)
To: [Fidis, Alexander](#)
Cc: (b) (6)
Subject: RE: Rim Fire Ranch Clean Water Act [alleged] Violations Idaho
Date: Friday, July 18, 2014 3:47:33 PM
Attachments: [20140718163243.pdf](#)

Alex:

Here is the signature page to the latest draft you sent me which has been signed by (b) (6) on behalf of Rim Fire Ranch. I will wait to hear from you regarding the no discharge certification and whether any further documentation needs to be submitted from us. I understand that the matter will now go into public comment period after which you will notify us if the decision becomes a final order after which payment would become due within 30 days.

Thank you.

Terry.

From: Fidis, Alexander [mailto:Fidis.Alexander@epa.gov]
Sent: Thursday, July 17, 2014 5:49 PM
To: Terry Jones
Subject: RE: Rim Fire Ranch Clean Water Act [alleged] Violations Idaho

Terry –

Attached is the final CAFO for your review. Feel free to contact me if you have any questions of disagreement with the final document. Otherwise, if everything looks acceptable have (b) (6) sign the agreement and mail it back to me at the address in the CAFO (at the end in the certificate of service). I will need some additional time with the no discharge part but I did not want to delay your review of the agreement. We may be able to rely on the information you provided to verify compliance but I need to check. Thanks.

-Alex

From: Terry Jones [mailto:tsj@quanelaw.com]
Sent: Monday, July 14, 2014 8:40 AM
To: Fidis, Alexander
Cc: (b) (6)
Subject: RE: Rim Fire Ranch Clean Water Act [alleged] Violations Idaho

Alex:

Thank you for your latest email and for working with us to complete this document. I am only responding to those changes which you commented on in the latest draft as it is my understanding that you otherwise agreed to my prior changes:

Section 3.11 - regarding your question about whether Sand Hollow is really a waste water spill way versus a source of irrigation water – the main purpose of this spillway is to allow the irrigation

district to manage water levels in the canal. When water use goes down, they can regulate the water level in the canal by increasing the amount they release down this spillway. There are other such spillways in the system. because there is generally some level of water in the spillway during the irrigation season, downstream users are able to apply this water to their fields. In this regard the spillway serves a dual purpose but the primary purpose is to be a means of wasting water from the canal system to help manage the flow level. For this reason I referred to it as a “waste water spill way”. You could also refer to it as a “waste water spillway and downstream irrigation water source” if you deemed this clarification necessary.

Section 3.14 – we agree to your change

Section 3.16 - regarding this section we propose the following change be made in order to address what appears to be both of our concerns and to make the document factually accurate – “At all times relevant to this action, discharges from the CAFO were not authorized by an NPDES permit. As a result, any process wastewater contained within the irrigation run-off which was discharged into the Sand Hollow Drainage was in violation of Section 301(a) the CWA, 33 U.S.C. § 1311(a).”

Section 4.2 – we understand your position and will agree to your change

Section 4.3 and below – regarding our desire to not use the term “penalty” we disagree that other terms which have the same meaning cannot be used but do not wish to fight about this issue. We are looking out for what we expect our unfriendly neighbor to try and do with this document and it sounds like you have heard similar arguments in the past. We will accept your language in order to complete this matter.

Regarding your question below about whether we wish to be go through the permit process or prepare a no discharge certification we have spent some time reviewing the regular reporting requirements if we were to be permitted. I went to various EPA websites, but I did not see any forms for Region X regarding no discharge certifications. I know we are required to have a nutrient management plan which we already have in place and have provided a copy of it to you. I need to know if the EPA interprets the recordkeeping requirements to be the same for the CAFO whether they have a discharge permit or whether they are have a no discharge certification. Also, who has the recordkeeping obligation? Is this something that we can make Sage Dairy, the operator of the CAFO, responsible for doing as opposed to (b) (6) who simply owns the property? Also, who signs the no discharge certification where the dairy is the CAFO but (b) (6) owns the property where the CAFO is located? Regarding the no discharge certification, I found some forms from other EPA regions which simply state the required language from the regulation, but they do not seem to imply that any further records are provided to the EPA along with the certification. How can we provide any of the records discussed in the regulations along with our no discharge certification which we will now be required to start keeping? How often are these records to be provided to the EPA and to whom? We have obviously had the state come in many times and inspect our operation and give us input on how to design our lagoons and approve our lagoons before Sage Dairy started operation. In order to complete the no discharge certification, does the EPA come out to evaluate the operation or give input on where we start with recordkeeping for the existing system? We are asking for this clarification because we are hoping to get this right going

forward.

Thanks for your input on these matters.

Terry.

From: Fidis, Alexander [<mailto:Fidis.Alexander@epa.gov>]
Sent: Wednesday, July 09, 2014 5:21 PM
To: Terry Jones
Subject: RE: Rim Fire Ranch Clean Water Act [alleged] Violations Idaho

Terry –

Attached is a revised copy of the CAFO. I accepted the majority of your changes in the Facts and Allegations section and had a few suggestions and edits that I believe are consistent with your edits. The provisions where I did not accept your edits or had changes are in tracked changes with comment bubbles.

We cannot agree to most of the edits in Sections IV and V. I included comments to provide reasons why we cannot accept the changes. We often get requests to not use the term penalty and we never agree to make the change. EPA's authority under Section 309 of the CWA is to assess penalties, not to collect sums or figures. There are also a number of other reasons the payment must be referred to as a penalty including the prohibition on tax deductibility of penalties. The other showstopper is your edit stating that Rim Fire Ranch denies the factual allegations. We can allow for a formulation that a Respondent neither admits nor denies the facts but we cannot enter into an agreement with a Respondent that is expressly denying the factual allegations.

As a reminder, Rim Fire Ranch is still not in compliance with the CWA until if either files a no discharge certification pursuant to 40 CFR 122.23(i) or submits a notice of intent for coverage under the CAFO general permit. As we discussed, it appears that either option is available for Rim Fire and I know you expressed some interest in the protections provided by a permit. EPA will need to know which approach Rim Fire Ranch intends to take before entering into a final agreement.

If you would like to discuss the revised agreement feel free to call me at 206-553-4710. Thanks.
-Alex

From: Terry Jones [<mailto:tsj@quanelaw.com>]
Sent: Tuesday, July 08, 2014 9:31 AM
To: Fidis, Alexander
Cc: (b) (6)
Subject: RE: Rim Fire Ranch Clean Water Act [alleged] Violations Idaho

Alex:

Attached are our changes to the document you propose. We do feel strongly that these changes need to be made to advance a fair document which reflects this is a compromise agreement. Virtually all the changes are to section III with a couple of word changes to section IV mainly to the

use of the word penalty. Several of the changes to the fact issues in section III were to correct factual errors in the description of events... Please compare my changes to your draft so we can get the document completed.

Terry

From: Fidis, Alexander [<mailto:Fidis.Alexander@epa.gov>]
Sent: Monday, June 30, 2014 4:00 PM
To: Terry Jones
Subject: RE: Rim Fire Ranch Clean Water Act [alleged] Violations Idaho

Terry:

Attached is the draft Consent Agreement and Final Order for your review. The language in sections I, II and IV and the Final Order in Section V is template language (for fairly straightforward matters such as recitation of authority, admin process and payment instructions) that was developed for use in all of our CWA settlements and therefore we do not consider changes to these sections unless there are compelling reasons to do so. Section III sets out the factual and legal basis particular to this agreement. Let me know if you have any questions or comments. Otherwise, we'll proceed with obtaining a docket number and then send a final copy to you for signature.

-Alex

From: Terry Jones [<mailto:tsj@quanelaw.com>]
Sent: Monday, June 16, 2014 1:27 PM
To: Fidis, Alexander
Cc: (b) (6)
Subject: RE: Rim Fire Ranch Clean Water Act [alleged] Violations Idaho

Alex:

After meeting with our bank and knowing that we should have at least 60 days to come up with the funds, it is our goal to avoid the payment plan by shifting other payments and expanding the time to pay other obligations. This option did not exist before you provided us with the revised lower figure at last week's conference. Thank you.

Terry.

From: Fidis, Alexander [<mailto:Fidis.Alexander@epa.gov>]
Sent: Monday, June 16, 2014 1:40 PM
To: Terry Jones
Cc: (b) (6)
Subject: RE: Rim Fire Ranch Clean Water Act [alleged] Violations Idaho

Terry:

I'll draft up the agreement and have something for you to review in about a week. I have one clarifying question, your email discusses financing from a bank. Does this mean you intend to pay

the penalty in a lump sum or did you still want to proceed with a payment plan?

The settlement process is as follows. Once you have reviewed and signed the agreement EPA will post notice of the settlement on our website and invite public comment for a 30-day period (required by statute – 42 U.S.C. 1319(d)). At the end of the comment period, EPA signs the settlement at it becomes effective. Once effective, the agreement will require payment within 30 days of the effective date (the agreement will detail payment instructions). So for your planning purposes, payment would not be due any earlier than 60 days from the date of public notice (30 day comment period + 30 day payment window following the agreement effective date). If EPA receives adverse public comments and the commenter requests an administrative hearing on the proposed settlement, payment would be delayed for a longer indeterminate amount of time until the hearing issues are resolved or decided (a hearing would require EPA to defend/explain the settlement). If you have any questions or concerns about this process feel free to contact me to discuss.

-Alex

From: Terry Jones [<mailto:tsj@quanelaw.com>]

Sent: Monday, June 16, 2014 8:54 AM

To: Fidis, Alexander

Cc: (b) (6)

Subject: RE: Rim Fire Ranch Clean Water Act [alleged] Violations Idaho

Alex:

Thank you for the informative discussion last week. Given the pros and cons of this situation and your willingness to work with us and help educate us in this process, it seems it would be in our best interest to accept your proposal of paying the \$17,600 figure you gave to us last week in order to fully and finally resolve this matter. We understand that a consent agreement to resolve this matter would include no admission of fault or of polluting on the part of Rim Fire Ranch and that the agreement is simply a resolution between the parties in response to the concerns raised. The issue for us is how to pay these funds. Since our last meeting, (b) (6) and I have discussed this issue at length. In turn, he has discussed how he can come up with the money with his bank both last week and again this morning. He has been told that he can likely increase this year's operating loan in order to acquire the funds to pay the proposed resolution amount of \$17,600. As I understand our discussion last week, you indicated that there would be a public comment period on the proposed resolution of this matter which would take a few weeks before any payment would be due. If he is going to be required to pay either way, we would prefer to engage in payment arrangements with our bank who knows us and who has given us some flexibility in the past when our financial situation became tenuous. This would allow us to complete any financial obligation to the EPA and allow us to move forward. I would appreciate you providing me with a proposed document which sets out the terms of this agreement for us to review and consider as well as the timeline for when and to whom the money needs to be paid. It is my understanding that we would likely have at least 30 to 45 days to gather these funds before they would be due which we will need to get this together. I look forward to hearing from you.

Terry Jones.

Terrence S. Jones

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